permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the Internal Revenue Service's files relating to the agency:

- (13) Comply with the requirements elsewhere in this part concerning fees for credit counseling services and fee waiver policies; and
- (14) Comply with the requirements elsewhere in this part concerning certificates.

[78 FR 16153, Mar. 14, 2013]

§ 58.21 Minimum requirements to become and remain approved agencies relating to fees.

- (a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:
- (1) A fee of \$50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;
- (2) A fee exceeding \$50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee. An agency that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the agency's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and
- (3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and caling principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto

shall be published in the FEDERAL REGISTER.

- (b)(1) An agency shall waive the fee in whole or in part whenever a client demonstrates a lack of ability to pay the fee.
- (i) A client presumptively lacks the ability to pay the fee if the client's household current income is less than 150 percent of the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.
- (ii) The presumption shall be rebutted, and the agency may charge the client a reduced fee, if the agency determines, based on income information the client submits in connection with counseling services, that the client is able to pay the fee in a reduced amount. Nothing in this section requires an agency to charge a fee to clients whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this section.
- (iii) An agency shall disclose its fee policy, including the criteria on which it relies in determining a client's eligibility for reduced fees, and the agency's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with §58.20(1)(2).
- (2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on clients and agencies. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the FEDERAL REGISTER.
- (c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:
 - (1) The client's net worth:
- (2) The percentage of the client's income from government assistance programs;

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- (3) Whether the client is receiving *probono* legal services in connection with a filed or anticipated bankruptcy case; or
- (4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the client and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).
- (d) An agency shall not require a client to purchase counseling services in connection with the purchase of any other service offered by the agency.

[78 FR 16153, Mar. 14, 2013]

§58.22 Minimum requirements to become and remain approved agencies relating to certificates.

- (a) An approved agency shall send a certificate only to the client who took and completed the counseling services. except that an approved agency shall instead send a certificate to the attorney of a client who took and completed counseling services if the client specifically directs the agency to do so. In the case of Internet counseling and automated telephone counseling, counseling is not complete until the client has engaged in interaction with a counselor, whether by electronic mail, live chat, or telephone, following the automated portion of the counseling session.
- (b) An approved agency shall attach to the certificate the client's debt repayment plan (if any).
- (c) An approved agency shall send a certificate to a client no later than one business day after the client completed counseling services. If a client has completed counseling services, an agency may not withhold certificate issuance for any reason. An agency may not consider counseling services incomplete based solely on the client's failure to pay the fee.
- (d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this part, a person completing such other financial counseling is a client and the approved agency shall send a certificate to the client no later than one business day after the client's re-

- quest. The approved agency shall not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with §58.20(1)(1).
- (e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.
- (f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.
- (g) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.
- (h) An approved agency shall issue a replacement certificate to a client who requests one.
- (i) An approved agency shall not file certificates with the court.
- (j) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.
- (k) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.
- (1) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (j) of this section, which signature shall be either:
 - (1) An original signature; or
- (2) In a format approved for electronic filing with the court (most typically in the form/s/name of counselor).
- (m) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.
- (n) An approved agency shall identify on the certificate:
- (1) The specific federal judicial district requested by the client;